THE HONOURABLE SRI JUSTICE V. ESWARAIAH

WRIT PETITION No.14729 OF 2007

DATED: 30-07-2007

BETWEEN

A. P. Rao, S/o. A. V. Rao,
R/o. 19/A, Vengalraonagar,
Hyderabad.

…PETITIONER

AND

The Commissioner of Police,
Hyderabad and others.

…RESPONDENTS

ORDER:

Petitioner seeks a Writ of Mandamus to declare the action of the Commissioner of Police, the Deputy Commissioner of Police and the Station House Officer, Sanjeeva Reddy Nagar Police Station, Hyderabad – respondents 1 to 3 in not registering the complaints dated 03.12.2004, 20.11.2006, 22.02.2007 and 27.03.2007 given by him as illegal and arbitrary and violative of Article 21 of the Constitution of India and contrary to the mandatory provisions of Sections 154 and 155 of the Code of Criminal Procedure, 1973 as well as Section 4 of the Schedule Castes & Schedule Tribes (Prevention of Attrocities) Act, 1989 (for short 'the Act') and consequently to direct the respondents 1 to 3 to register the complaint against the respondents 4 and 5.

2. Learned counsel for the petitioner submits that the petitioner was selected to IAS in 1979 and while working as Special Officer, Land Ceiling, he married the fourth respondent on 05.10.1984. Thereafter, on 06.02.1985,

the respondents 4 and 5 gave a complaint under Sections 367, 498-A, 343 and 323 of the Indian Penal Code, 1860 against the petitioner alleging that he was harassing the fourth respondent. Based on said complaint a crime has been registered and after filing charge sheet, the petitioner was convicted for the offence under Section 498-A IPC sentencing him to undergo six months imprisonment apart from fine of Rs.1,000/- but he was acquitted for the charges framed under Sections 367, 343 and 323 IPC in S.C.No.139 of 1985 by judgment dated 04.07.1997 passed by the
I Additional Metropolitan Sessions Judge, Hyderabad. As against the said judgment the petitioner preferred an appeal before this Court in Crl.A.No.672 of 1997 and this Court by judgment dated 27.04.2001 allowed the appeal acquitting him of the alleged charge under Section 498-A IPC holding that the prosecution failed to prove the charge against him.

3. The learned counsel further submits that after conviction in S.C.No.139 of 1985, though the State Government recommended the dismissal of the petitioner from service, the charge memo issued for his dismissal was withdrawn after his acquittal. He further submits that the complaint filed before the third respondent was not at all registered though a cognizable was alleged to have been committed by the respondents 4 and 5. He further submits that Sections 154 and 155 of Cr.P.C mandates the official respondents to register the crime, but they have violated the mandatory provisions and therefore, the petitioner is entitled to seek a Writ of Mandamus directing the respondents 1 to 3 to register the complaint for the offence under Sections 3(1)(viii), 3(1)(ix), 3(1)(x), 3(2)(ii) and 3(2)(vii) of the Act.

4. I have perused the copy of the complaint dated 03.12.2004 addressed to the Station House Office, Sanjeeva Reddy Nagar Police Station, running into 15 pages and the subsequent reminders dated 20.11.2006 and also the representation made on 22.02.2007 and 27.03.2007 made before the Commissioner of Police, Hyderabad, marking copies to the second

respondent. I have also perused the judgment in S.C.No.139 of 1985 dated 04.07.1997 and the judgment of this Court in Crl.A.No.672 of 1997 dated 27.04.2001.

However, after acquittal of the petitioner for the offence under Section 498-A by judgment dated 27.04.2001, he made a complaint to the respondents nearly after a period of three years on 03.12.2004.

5. It is the case of the petitioner that not only the fourth respondent, his former wife, committed the offence under the provisions of the Act but also the persons connected thereto i.e. the Law Secretary, all the Chief Secretaries, the Secretary (Poll) named in the said complaint dated 03.12.2004 and the then Chief Minister,

who were the culprits/accused behind foisting a false case, therefore, all of them are liable to be proceeded under Section 4 of the Act and also under Sections 120-B and 109 IPC as there is conspiracy.

6. Under Section 4 of the Act, whoever, being public servant but not being a member of a schedule caste or a schedule tribe, willfully neglects his duties required to be performed by him under the Act, shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to one year. Having filed a complaint, the petitioner has not impleaded all the Chief Secretaries, Law Secretary and the then Chief Minister to this writ petition against whom the petitioner wanted a case to be registered under the aforesaid provisions of the Act, but he restricted his relief for registration of case against respondents 4 and 5 only. However, there is no basis to file such a complaint against all the Chief Secretaries, Law Secretary and the then Chief Minister, as the filing of the complaint by respondents 4 and 5 alone led to the registration of crime prosecuting the petitioner for the offence under Sections 367, 343, 323 and 498-A IPC in S.C.No.139 of 1985. A perusal of the said judgment of the learned Sessions Judge goes to show that there is no finding about falsity, malicious or vexatious complaint or charge sheet, as a matter of fact, the learned

Sessions Judge held petitioner guilty of the offence under Section 498-A IPC. Even this Court in the criminal appeal has not recorded any finding about the institution of a false, malicious and vexatious complaint or prosecution. Therefore,

I am of the opinion that merely because the petitioner was acquitted

it cannot be said that the proceedings initiated against him are false, malicious and vexatious. In the absence of any recorded finding about falsity or frivolous information or malicious or vexatious prosecution or giving fabricated evidence, I am of the opinion that there is no justification on the part of the petitioner to lodge such complaint. However, to attract the aforesaid provisions of the Act pursuant to the complaint, I am of the opinion that the circumstances, which the petitioner explained that he was acquitted by this Court, it cannot be said that the ingredients of the aforesaid provisions of the Act have been made out warranting the respondents to register a case against the persons named in the complaint. Therefore, it cannot be said that the official respondents have illegally violated the mandatory provisions of Sections 154 and 155 Cr.P.C. in not registering the complaint of the petitioner dated 03.12.2004.

7. However, when there is a remedy available to the petitioner under Section 190 read with Section 200 Cr.P.C, it is not open to him to seek a Writ of Mandamus, as held by the Supreme Court in **GANGADHAR JANARDHAN MHATRE v. STATE OF MAHARASHTRA**[1], which was affirmed and reiterated in **PRAKASH SINGH BADAL v. STATE OF PUNJAB**[2] at Para 73. The Supreme Court in **HARI SINGH v. STATE OF U.P**[3] while considering the aspects that have been highlighted in **All India Institute of Medical Sciences Employees' Union v. Union of India** [(1996) 11 SCC 582] and **Gangadhar's** case (1 Supra) wherein it was specifically observed that a writ petition in such cases is not to be entertained, reiterated the said proposition. Therefore, I am of the opinion that the writ petition filed

by the petitioner to direct the respondents 1 to 3 to register a case is not maintainable.

The writ petition is accordingly dismissed. There shall be no order as to costs.

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V. ESWARAIAH, J

July 30, 2007
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[1] (2004) 7 SCC 768
[2] (2007) 1 SCC 1
[3] 2006 (5) Supreme 513